

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BENJAMIN LOPEZ,

Plaintiff,

- against -

PHILIP D. HEATH,

Defendant.
-----X

09-CV-8921 (CS) (PED)

**MEMORANDUM DECISION
AND ORDER ADOPTING
REPORT AND
RECOMMENDATION**

Appearances:

Benjamin Lopez
Ossining, New York
Plaintiff Pro Se

John James Sergi
Nicholas William DiCostanzo
White Plains, New York
Counsel for Defendant

Seibel, J.

Before the Court is the Report and Recommendation ("R&R") dated April 6, 2011, of Magistrate Judge Paul E. Davison in this action. (Doc. 15.)

A district court reviewing a magistrate judge's R&R "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise objections to the R&R, but they must be "specific" and "written," and submitted "[w]ithin 10 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the R&R to which no timely objections have been made, provided no clear error is apparent from the face of the record. *See Lewis v. Zon*, 573 F. Supp. 2d 804, 811

(S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); Fed. R. Civ. P. 72 advisory committee's note (b).

Plaintiff's time to object to the R&R has run, and he has filed no objections. I discern from the face of the record no clear error in the recommendation of the R&R, and accordingly it is adopted as the decision of the Court. Plaintiff's petition for a writ of *habeas corpus* is DENIED, and the Clerk of the Court is respectfully directed to close the case.

SO ORDERED.

Dated: July 22, 2011
White Plains, New York



CATHY SEIBEL, U.S.D.J.